



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-3/52599

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Barron County Dept. of Social Services in regard to medical assistance, a hearing was held on March 15, 2002, at Barron, Wisconsin.

The issue for determination is whether the petitioner's spouse is entitled to an increase in her allocation from the petitioner's income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

(rep)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Denise Westin, ESS
Barron County Dept Of Human Services
Courthouse Room 338
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of a nursing home in Barron County.
2. The petitioner's spouse lives in the community.
3. The petitioner receives \$3,190 from a retirement fund each month and \$116 from social security. His spouse has no income.

4. The petitioner's spouse incurs the following expenses necessary to meet her minimum maintenance needs each month (*Exhibit 1*):
 - a. Federal income tax: \$275
 - b. State income taxes: \$116.67
 - c. Medicare: \$52
 - d. Health Insurance: \$145
 - e. Car, homeowner, personal umbrella, and business insurance \$136.45
 - f. Propane \$100
 - g. Real Estate Taxes \$170.53
 - h. Burial Insurance \$56.62
 - i. Phone \$111.48
 - j. Electric \$126.10
5. The petitioner's wife seeks an increase in the basic allocation of income from the petitioner because taxes decrease the amount she has available to meet her budget.

DISCUSSION

The petitioner lives in a nursing home and receives medical assistance while his wife remains in their family home. Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." §HFS 103.07(1)(d), Wis. Adm. Code. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of institutionalized person so that the spouse does not fall into poverty. See §49.455, Wis. Stats., and 42 U.S.C. §13964-5. The allowance is the lesser of \$2,175 or \$1990 plus an excess shelter allowance, which is any shelter cost over \$597. *MA Handbook*, Appendix, §23.6.0. *BPS Operations Memo*, 02-23; issued March 19, 2002. An allowance to prevent spousal impoverishment can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts the hearing officer's ability to raise the limit. Wisconsin law provides the following test for the exception:

If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse's monthly income allowance under sub. (4)(b).

§49.455(8)(c), Stats. Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected. For example, the Division of Hearings and Appeals has long and consistently denied donations, including those to a church. See, e.g., MRA-45/#22021 MRA-32/22456 MRA-05/37611 MRA-13/45972 MRA-14/22543.

The petitioner receives \$3,190.02 from a pension and \$54 from social security after Medicare is taken out for a total unearned income of \$3,254.02. After allowing a \$1,935 allocation to his wife (the amount was only recently raised to \$1,990), \$145 in insurance and \$45 for a personal allowance, the program assessed the a patient liability of \$1,129 each month. The petitioner's wife contends that the spousal allocation is

insufficient because it does not consider the nearly \$400 per month that goes toward income taxes. She brought income tax returns to the hearing and she does not overstate them.

Income taxes are necessary expenses that can be considered when determining whether to increase her spousal allocation, but they must be considered with other expenses. Her total budget lists only \$1,412.38 in expenses, including taxes. *See Exhibit 1.* In addition the budget lists an \$80 donation to her church, which I cannot allow, and \$145 for insurance that the medical assistance agency has already deducted. I do note that her budget appears to understate her total expenses because it includes nothing for food or gas. But she has the burden to prove what her expenses are so until she provides actual figures I cannot guess at what they are. I also note that the petitioner seems to believe that her husband's nursing home cost must come out of her allocation. *See Exhibit 2.* This is not true because nursing home cost are included in his patient liability. Finally, there is no need to buy insurance for the petitioner because his medical expenses are covered by medical assistance. At this point, the evidence only justifies increasing the spousal allocation to the new standard limit of \$1,990. The petitioner's spouse must file for new hearing if she believes that she can submit enough evidence to justify a greater allocation.

CONCLUSIONS OF LAW

The petitioner's spouse has not proved that she requires more than the basic spousal impoverishment allocation of \$1,990 to meet her minimum monthly maintenance needs.

NOW, THEREFORE, it is **ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it increase the spousal allowance of the petitioner's wife to \$1,990 per month and reduce the petitioner's patient liability by \$55.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this 8th day of May,
2002

/sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
71/MDO